

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 96-75

In the Matter of

Amendment of Section 73.202(b).
Table of Allotments,
FM Broadcast Stations.
(Reynoldsville, Pennsylvania)

RM-8781

NOTICE OF PROPOSED RULE MAKING

Adopted: March 25, 1996;

Released: April 18, 1996

Comment Date: June 10, 1996

Reply Comment Date: June 25, 1996

By the Chief, Allocations Branch

1. The Commission has before it the petition for rule making filed by Priority Communications, Inc. ("petitioner"), licensee of Station WDSN(FM), Reynoldsville, Pennsylvania, requesting the substitution of Channel 293A for Channel 258A at Reynoldsville, and the modification of Station WDSN(FM)'s license to specify the alternate Class A channel.

2. Petitioner states that Station WDSN(FM) presently operates at a power level of 3 kW and is precluded from increasing its power to 6 kW because of short-spacings to Stations WDCX(FM), Channel 258B, Buffalo, New York and WFRA-FM, Channel 275B1, Franklin, Pennsylvania. However, if Channel 293A is substituted for Channel 258A, it states that Station WDSN(FM) can increase its power to 6 kW.

Technical Summary

3. Channel 293A can be allotted to Reynoldsville in compliance with the Commission's minimum distance separation requirements and can be used at Station WDSN(FM)'s present transmitter site.¹ Canadian concurrence in the allotment is required since Reynoldsville is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

4. We believe petitioner's proposal warrants consideration since the substitution of Channel 293A for Channel 258A at Reynoldsville could enable Station WDSN(FM) to increase its power to 6 kW and increase its service area. We also propose to modify Station WDSN(FM)'s license to specify Channel 293A. Competing expressions of interest in use of the channel at Reynoldsville will not be accepted since the procedures outlined in *Modification of FM and TV Licenses*, 98 FCC 2d 916 (1984), and Section 1.420(g)

do not apply in cases where no change in the class of a channel is involved. *See Chester, Virginia*, 9 FCC Rcd 80 (1993).

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.
City	Present Proposed
Reynoldsville, Pennsylvania	258A 293A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **June 10, 1996**, and reply comments on or before **June 25, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John F. Garziglia, Esq.
Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment

¹ The coordinates for Channel 293A at Reynoldsville are

41-08-41 North Latitude and 78-52-41 West Longitude.

which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties

to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.